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To: Attorney for the Defendant

Re: Potential Impeachment Disclosure – JCSO Det. A. Frank

It was recently brought to my attention that Det. Frank was found liable in a civil trial that occurred in California in 2009. The case, *Ovasapyan*¹ v. *City of Glendale*², alleged that Det. Frank³, then a detective with the Glendale Police Department engaged in actions that constituted Wrongful Arrest and Malicious Prosecution.

At the conclusion of the trial, the jury made following specific findings with respect to Det. Frank: The plaintiff was wrongfully arrested, the wrongful arrest was executed by Det. Frank, the plaintiff was subject to wrongful prosecution, Det. Frank caused the plaintiff to be subject to wrongful prosecution, the conduct caused the plaintiff suffer injury or damage, and that preponderance of the evidence demonstrated that the defendant's conduct was malicious, oppressive, or in reckless disregard of the plaintiff's rights. The jury also provided the plaintiff with a monetary award due to its findings.

I conducted a public records request with the City of Glendale, California by requesting copies of any internal investigations into Det. Frank with respect to the allegations in this case as well as any records indicating that Det. Frank had been placed on a "Brady List" as a result of this or any other case. Both requests did not result in any responsive records.

¹ Edmond Ovasapyan was arrested and charged with murder relating to a murder committed by a group of individuals in 2008 at the decedent's home, witnessed by relatives. The Plaintiff was held for approximately seven months in jail while the charges were pending. Follow up investigation and forensic test results eventually eliminated the Plaintiff as a suspect leading to charges being dismissed against him.

² 2009 U.S. Dist. Lexis 140866, US District Court for the Central District of California Case No. CV 08-194-CAS

³ As well as another police officer, Lt. Grimes.

I then contacted a Deputy District Attorney for Los Angeles County who was familiar with Det. Frank and the Ovasapyan case. This individual provided me a summary of the claims as well as a complete transcript of the trial.

I have conducted a review of potential areas of concern regarding Det. Frank's performance in the *Ovasapian* case and have compared them to the trial transcripts in my possession.

The argument for deficient performance appears to be as follows:

1. Det. Frank falsely stated that a witness had positively identified the plaintiff in an interview
2. Det. Frank falsely stated that the Plaintiff drove a car of the same make and model as the shooter
3. Det. Frank withheld exonerating cell phone evidence from the District Attorney's office that would have exonerated the Plaintiff
4. Det. Frank failed to investigate the Plaintiff's alibi evidence
5. The Plaintiff's evidence suggesting a different suspect was deliberately or negligently ignored by the Glendale Police Department

A review of the trial transcripts indicates the following with respect to each allegation:

1. Det. Frank did not interview the witness who made the identification. He relayed what he had been told by the detective who did. The detective told him that the witness identified the plaintiff as someone who had recently done work at a location where the witness worked.
 - a. Later during a photo montage, conducted by the same detective who conducted the interview, the witness selected a photo of the Plaintiff and said the shooter looked just like the Plaintiff, but younger. This was relayed to the prosecutor assigned to the case in the report authored by the detective conducting the montage.
2. Another detective drafted the probable cause statement, which said that the shooter drove a black Honda Accord – the same type of car driven by the Plaintiff. The detective who wrote the probable cause statement does not know where he got the information that the shooter drove a black Honda Accord. Other statements indicate the shooter drove a black Honda or a burgundy Tundra but make no mention of the car being an *Accord*.
3. Cell phone records were separately obtained by both the Plaintiff via subpoena duces tecum and Det. Frank by search warrant. Copies of the Plaintiff's cell phone records were given to the Glendale Police Department, which were then provided to the District Attorney's Office. Copies of the Plaintiff's cell phone records obtained by Det. Frank were given to the Plaintiff's defense team while

he was pending charges. The contents of the cell phone records do not appear to have had any material impact with the case.

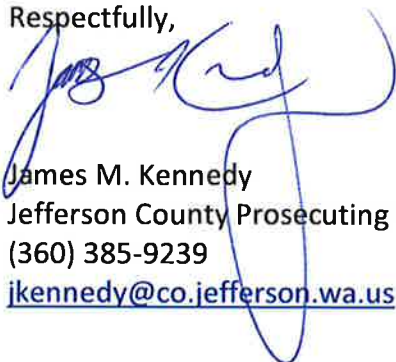
4. The Probable Cause statement, authored by another detective, stated that the Plaintiff did not have an alibi. The alibi evidence later provided by the Plaintiff, if true and accurate, still would not have conclusively ruled out the Plaintiff's participation in the murder. Detectives did conduct a follow up investigation to corroborate the Plaintiff's alibi assertion, but were unable to find evidence that supported it.
5. The evidence available to the detectives suggested that multiple suspects were involved in the commission of the original crime being investigated. DNA evidence collected from a baseball cap found at the crime scene was traced back to an individual who was not the Plaintiff. It took approximately seven months following the arrest of the Plaintiff for the DNA test results to come back. The DNA matched another individual who was then incarcerated. Det. Frank interviewed this individual who stated that the Plaintiff was not involved in the murder. This information was provided to the District Attorney's Office, which ultimately lead to the dismissal of charges against the Plaintiff.

In conclusion, it does not appear that Det. Frank personally authored any reports or directly engaged in any aspect of the investigation that lead to the false arrest or malicious prosecution of the Plaintiff. Contrary to the findings made by the jury in *Ovasapyan v. City of Glendale*, it appears that Det. Frank's actions are what actually lead to the charges being dismissed against the Plaintiff.

This disclosure is being made pursuant to the Prosecutor Attorney's obligation according to *Stickler v. Greene*, 527 U.S. 263, 281, 119 S. Ct. 1936, 1948, 144 L. ed. 2d 286, 301 (1999), CrR 4.7, and CrRLJ 4.7.

This memorandum has been generated to provide the defense notice of potential impeachment issues. Copies of the trial transcript of *Ovasapyan v. City of Glendale* will be made available upon request.

Respectfully,



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